

California Regional Water Quality Control Board
North Coast Region

Administrative Civil Liability Complaint No. R1-2007-0019

For

Violations of Waste Discharge Requirements
Order No. R1-2004-0038
NPDES NO. CA0023639

In the Matter of
Graton Community Services District
Wastewater Treatment, Reclamation and Disposal Facility
WDID No. 1B840600SON

Sonoma County

This complaint to assess mandatory minimum penalties and administrative civil liability pursuant to Water Code section 13385 is issued to the Graton Community Services District (hereinafter Discharger) for violations of Waste Discharge Requirements (WDRs) Order No. R1-2004-0038 (NPDES No. CA0023639) for the period October 6, 2004, through October 30, 2006.

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), hereby gives notice that:

1. The Discharger owns and operates the Graton Wastewater Treatment Facility (WWTF). The WWTF serves the unincorporated community of Graton and discharges secondary treated domestic wastewater during the wet season (October 1 to May 14) into Atascadero Creek, a tributary to Green Valley Creek, thence the Russian River. From August 24, 1995 to October 5, 2004, the Discharger's WWTF was regulated by Waste Discharge Requirements Order No. 95-56. On January 18, 2005, the Executive Officer issued Administrative Civil Liability Complaint No. R1-2005-0004 to the Discharger. Complaint No. R1-2005-0004 assessed mandatory minimum penalties of \$21,000 for violations of Order No. 95-56 that occurred between January 1, 2000 and May 5, 2004. Between May 6, 2004 and October 5, 2004, there were no additional violations of Waste Discharge Requirements Order No. 95-56 requiring the assessment of penalties.
2. On October 6, 2004, the Regional Water Board adopted new Waste Discharge Requirements for the Discharger's WWTF. WDR Order No. R1-2004-0038 was adopted by the Regional Water Board on October 6, 2004. These waste discharge requirements serve as a National Pollutant Discharge Elimination System (NPDES) Permit under the Federal Clean Water Act.
3. This complaint covers violations of effluent limitations contained in Order R1-2004-0038 that occurred during the period of October 6, 2004 through October 30, 2006. The details of these violations are summarized in Finding 13 of this Complaint. These violations are subject to the mandatory minimum penalties provision contained in Water Code section 13385, subdivisions (h) through (i).

4. Water Code section 13385(h) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3000) for each serious violation. Water Code section 13385, subdivision (h)(2) defines a serious violation as one that occurs if the discharge from a facility regulated by an NPDES permit exceeds the effluent limitation for a Group I pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 40 percent or more, or for a Group II pollutant, as specified in Appendix A to section 123.45 of Title 40 Code of Federal Regulations, by 20 percent or more.
5. Water Code section 13385, subdivision (i)(1) requires the Regional Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six-month period:
 - a. Violates a waste discharge requirement effluent limitation.
 - b. Fails to file a report pursuant to Section 13260.
 - c. Files an incomplete report pursuant to Section 13260.
 - d. Violates a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

Violations under section 13385, subdivision (i)(1) are referred to as chronic violations in this Complaint.

6. This complaint also assesses penalties for failure to timely file discharge monitoring reports, required pursuant to Water Code section 13383. The details of these violations are summarized in Finding 15 of this Complaint.
7. Water Code section 13385.1, subdivision (a)(1), identifies the failure to timely file a discharge monitoring report required pursuant to Water Code section 13383 for each complete period of 30 days following the deadline for submitting the report as a "serious violation," requiring the assessment of \$3000 per violation.
8. On February 19, 2002, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2002-0040 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on July 30, 2002. The Enforcement Policy addresses, among other enforcement issues, issues related to assessing mandatory minimum and discretionary penalties.
9. Water Code section 13385, subdivision (l)(1) provides that a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) may be directed to a supplemental environmental project (SEP) in accordance with Section IX of the Enforcement Policy. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to a SEP may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000). This Complaint includes requirements for SEPs as specified in the Enforcement Policy.

10. Water Code section 13385, subdivision (k)(1) provides that the Regional Water Board may elect to require all or a portion of mandatory minimum penalties imposed under section 13385, subdivisions (h) or (i) against a publicly owned treatment works serving an eligible small community be directed to a compliance project (CP) in accordance with Section X of the Enforcement Policy. Mandatory minimum penalties for late reports may not be directed to a CP. The Enforcement Policy requires that the CP be designed to correct the violations within five years. This Complaint includes requirements for CPs as specified in the Enforcement Policy.
11. The Enforcement Policy also provides that the State Water Board supports the inclusion of SEPs in other ACL actions, so long as the projects meet the criteria specified in section IX of the Enforcement Policy.
12. The Enforcement Policy states that for the purpose of determining serious violations, BOD, suspended solids, settleable solids, grease and oil, and pH are identified as Group I pollutants in title 40 Code of Federal Regulations, section 123.45, Appendix A.
13. According to monitoring reports submitted by the Discharger, the discharge exceeded effluent limitations four times between October 6, 2004, and October 30, 2006. All four were serious violations as defined by Water Code section 13385, subsection (h). The mandatory minimum penalty amount for those violations is \$12,000 as shown in the following table:

**Effluent Limitation Exceedances
October 6, 2004, through October 30, 2006**

Date	Parameter	Reported Value	Violation Type	Mandatory Penalty
12/7/05	Exceeded Copper maximum daily effluent limitation of 5.62 ug/l (at hardness of 38 mg/l)	11 ug/l	Serious	\$3,000
3/31/06	Violated BOD % removal limits of 85%	54%	Serious	\$3,000
4/30/06	Violated BOD % removal limits of 85%	64%	Serious	\$3,000
4/30/06	Violated TSS % removal limits of 85%	69%	Serious	\$3,000
Total				\$12,000

14. General Provision J.12 in the Discharger's Waste Discharge Requirements Order No. R1-2004-0038 requires the Discharger to implement a discharge monitoring program and to prepare and submit NPDES self-monitoring reports to the Regional Water Board. The monitoring and reporting program was issued pursuant to the authority of Water Code section 13383.
15. The Regional Water Board received two of the Discharger's self-monitoring reports in an untimely manner. The total amount of the mandatory minimum penalties for the two late reports is \$9,000 as follows:

Report Period	Due Date	Date Received	Total Days Late	Mandatory Minimum Penalty
October 2005	Dec. 1, 2005	Feb. 16, 2006	77 days	\$6,000
November 2005	Jan. 1, 2006	Feb. 16, 2006	46 days	\$3,000
			Total	\$9,000

16. The total amount of the mandatory minimum penalties for effluent violations and late submittal of monitoring reports during the period May 6, 2004, through October 30, 2006, is \$21,000.
17. During the period between October 6, 2004 and October 30, 2006 the Discharger violated NPDES permit conditions contained in Waste Discharge Requirements Order No. R1-2004-0038 for which the Regional Water Board may impose civil liability under Water Code section 13385, subdivision (a)(2). The violations are summarized as follows with a summary table of the workplans/reports required, due dates, date received and days late:

“Purple Pipe Workplan”: Water Recycling Requirement E.11 of Order No. R1-2004-0038 requires the Discharger to submit the Purple Pipe Workplan within 90 days of the adoption of the Order. The Order was adopted and became effective on October 6, 2004. The due date was February 23, 2005. The report has not been received as of January 1, 2007.

“Toxicity Reduction Evaluation Workplan”: General Provision J.26 of Order No. R1-2004-0038 requires the Discharger to submit a Toxicity Reduction Evaluation Workplan within 180 days of the effective date of the Order. The Order was adopted and became effective October 6, 2004. The due date was May 25, 2005. The report was received on February 8, 2006.

“Recycled Water Engineering Report”: Water Recycling Provision G.2 of Order No. R1-2004-0038 requires the Discharger to submit an engineering report for the use of reclaimed water within six months of adoption of the Order. The Order was adopted and became effective on October 6, 2004. The due date was May 25, 2005. The report was received on September 29, 2006.

“Purple Pipe Report”: Water Recycling Requirement E.11 of Order No. R1-2004-0038 also requires the Discharger to submit documentation of full compliance with the “Purple Pipe Workplan” within one year of adoption of the Order. The Order was adopted and became effective on October 6, 2004. The due date was October 6, 2005. The report has not been received as of January 1, 2007.

“Status Document on Basin Plan Advanced Treatment Requirements (AWT)”: General Provision J.31 of Order No. R1-2004-0038 requires the Discharger to complete studies and environmental review for compliance with Basin Plan AWT on or before April 1, 2006. The report was received on November 29, 2006.

“Plan to Comply with CTR Limits”: General Provision J.30 of Order No. R1-2004-0038 requires the Discharger to submit a written plan on or before April 15, 2006, describing tasks and a time schedule to comply with Effluent Limitations B.9 and B.10 (California Toxics Rule effluent limitations). The plan must include a description of any tasks necessary to achieve compliance with interim effluent limitations, as well as tasks to achieve compliance with final effluent limitations if zero discharge is not likely to be achieved by October 6, 2007. The report has not been received as of January 1, 2007.

“Annual Progress Report”: Section J.30 of Order No. R1-2004-0038 requires the Discharger to submit annual progress reports describing the status of efforts to comply with Effluent Limitations B.9 and B.10 (California Toxics Rule effluent limitations). These reports are due on October 1 of each year, commencing October 1, 2006. The annual progress report for 2006 has not been received as of January 1, 2007.

“CIP and Specifications”: General Provision J.31 of Order No. R1-2004-0038 requires the Discharger to submit capital improvement project (CIP) plans and specifications by October 1, 2006. The report was received on November 29, 2006, but does not address CEQA, and therefore is considered incomplete, and untimely.

Report Type	Due Date	Date Received	Total Days Late
Purple Pipe Workplan (WDR E.11)	Feb. 23, 2005	Not Received as of January 1, 2007	677
Toxicity Reduction Evaluation Workplan (WDR J.26)	May 25, 2005	February 8, 2006	258
Recycled Water Engineering Report (WDR G.2)	May 25, 2005	September 29, 2006	492
Purple Pipe Report (WDR E. 11)	Oct. 6, 2005	Not Received as of January 1, 2007	452
Status Document on Basin Plan AWT (WDR J.31)	April 1, 2006	November 29, 2006	242
Plan to Comply with CTR Limits (WDR J. 30)	April 15, 2006	Not Received as of January 1, 2007	260
Annual Progress Report (WDR J. 30)	Oct 1, 2006	Not Received as of January 1, 2007	92
CIP and Specifications (WDR J. 31)	Oct 1, 2006	November 29, 2006	59

18. Water Code section 13385, subdivision (c)(1) provides for imposition of civil liability for violation of Waste Discharge Requirements in an amount not to exceed \$10,000 for each day the violation occurs. The table below shows the report that is late, the number of days late, and the maximum civil liability at \$10,000 for each day the violation occurs.

Report Type	Total Days Late	Penalty at \$10,000 per day
Purple Pipe Workplan	677	\$6,770,000
Toxicity Reduction Evaluation Workplan	258	\$2,580,000
Recycled Water Engineering Report	492	\$4,920,000
Full Compliance with Purple Pipe Requirements Report	452	\$4,520,000
Status Document on Basin Plan AWT	242	\$2,420,000
Plan to Comply with CTR Limits	260	\$2,600,000
Annual Progress Report	92	\$920,000
CIP and Specifications	59	\$590,000
Totals	2,253	\$25,320,000

19. By letter dated September 15, 2005, Regional Water Board staff requested that the Discharger prepare and submit a Spill Prevention Control and Contingency Plan (SPCC Plan). The request was made pursuant to Water Code section 13267 and cited potential penalties of \$1,000 per day pursuant to section 13268 for failure to submit. The SPCC Plan was also required to be submitted by General Provision J.21 of Order No. R1-2004-0038 by December 1, 2005. The SPCC Plan has not been received as of January 1, 2007. The SPCC Plan is 364 days late with a penalty of \$364,000 at \$1,000 per day.
20. In determining the amount of civil liability imposed on discretionary violations, the Regional Water Board is required to take into account the nature, circumstance, extent, and gravity of the violation(s); whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and, with respect to the violator, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation(s); and other matters as justice may require. At a minimum, liability is assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. These factors have been considered in determining the penalty amount assessed by this Complaint.
21. The issuance of this Complaint is an enforcement action to protect the environment, and is, therefore, exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321, subdivision (a)(2).

Graton Community Service District is Hereby Given Notice That:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed a mandatory minimum penalty of \$12,000 for four serious effluent limitation violations, a mandatory minimum penalty of \$9,000 for two late monitoring reports, and \$35,000 for late submittal of four reports (total 1,001 days late) and non-submittal of five reports (total 1,345 days late). The total penalty assessed is \$56,000.

2. A hearing shall be conducted on this Complaint by the Regional Water Board on April 25 and 26, 2007, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint within thirty days of the date of this Complaint. By signing and returning the waiver form, the Discharger agrees to:
 - a. Pay the total assessed penalty of \$56,000 to the State Water Pollution Cleanup and Abatement Account (CAA) within thirty days of the date of this Complaint, or
 - b. Propose a SEP in an amount that at least cost \$35,500 and pay the balance of the penalty to the CAA within thirty days from the date of this Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer). The sum of the SEP amount and the amount of the penalty to be paid to the CAA shall at least equal the full penalty amount of \$56,000, or
 - c. Propose a CP that at least cost \$12,000 and propose an SEP that at least cost \$29,500 and pay the balance of the penalty to the CAA within thirty days from the date of this Complaint (or in compliance with a payment schedule issued in writing by the Executive Officer). The sum of the CP and the SEP amounts and the amount of the penalty to be paid to the CAA shall at least equal the full penalty amount of \$56,000.
3. If the Discharger chooses to propose an SEP or CP, a proposal must be submitted within thirty days of the date of this Complaint to the Executive Officer for conceptual approval. Any SEP and/or CP proposal shall conform to the requirements specified in Sections IX and X of the Enforcement Policy. The SEP and/or CP proposal(s) must include a time schedule, for concurrence by the Executive Officer, to address implementation and completion for the SEP and/or CP. If the proposed SEP or CP and/or implementation schedule is not acceptable, the Executive Officer may allow the Discharger thirty days to submit a new or revised proposal, or may demand that, during the same thirty-day period the Discharger remit all or a portion of the assessed penalties. All payments, including money not used for the SEP and/or CP, must be payable to the CAA.
4. If the Discharger waives the hearing and pays the liability, the resulting settlement may become effective on the next day after the thirty-day public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint, reissue it as appropriate, or take other appropriate action.
5. If a hearing is held, the Regional Water Board may impose an administrative civil liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the attorney General to have a Superior Court consider enforcement.
6. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given thirty days to comment on any proposed settlement of this Complaint.

7. The Executive Officer shall maintain jurisdiction over approved SEP and/or CP implementation time schedules throughout the life of the SEP and/or CP. If, given written justification from the Discharger, the Executive Officer determines that a delay in the SEP implementation schedule was beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate.
8. Notwithstanding the issuance of this Complaint, the Regional Water Board shall retain the authority to assess additional penalties for violations of the Discharger's waste discharge requirements.

Catherine E. Kuhlman
Executive Officer